

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Michael Stacker,

Plaintiff,

-against-

Detective Michael McFadden, Detective Brett
Huzar, and Detective Rigel Zeledon,

Defendants.

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DIANE GUJARATI, United States District Judge:

On March 13, 2024, Magistrate Judge Marcia M. Henry issued a Report and Recommendation (“R&R”) recommending that Defendants’ Motion to Dismiss brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure should be granted with prejudice. *See generally* R&R, ECF No. 89.¹

Following issuance of the R&R, Plaintiff filed two submissions, *see* ECF Nos. 90, 91, which the Court construes as Plaintiff’s objections to the R&R.² Defendants did not file any objections to the R&R or any response to Plaintiff’s objections to the R&R. *See generally* docket.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P.

¹ Familiarity with the detailed procedural history and background of this action is assumed herein.

² The filing at ECF No. 90 was received by the Clerk’s Office on March 27, 2024. *See* ECF No. 90 at 1. The filing at ECF No. 91 was received by the Clerk’s Office on March 29, 2024 and consists of a copy of the filing at ECF No. 90 as well as various other documents. *See generally* ECF No. 91. The Court has considered each of the filings in its entirety. In light of Plaintiff’s *pro se* status, the Court liberally construes Plaintiff’s filings in this action. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

72(b)(3). A district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C.

§ 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) (providing that a district court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to”); *Arista Recs., LLC v. Doe 3*, 604 F.3d 110, 116 (2d Cir. 2010) (“As to a dispositive matter, any part of the magistrate judge’s recommendation that has been properly objected to must be reviewed by the district judge *de novo*.”); *Lorick v. Kilpatrick Townsend & Stockton LLP*, No. 18-CV-07178, 2022 WL 1104849, at *2 (E.D.N.Y. Apr. 13, 2022). To accept those portions of an R&R to which no timely objection has been made, however, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Lorick*, 2022 WL 1104849, at *2 (quoting *Ruiz v. Citibank, N.A.*, No. 10-CV-05950, 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014)); *see also Jarvis v. N. Am. Globex Fund, L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011).

In light of Plaintiff’s objections and out of an abundance of caution, the Court reviews *de novo* the entirety of the R&R. A review of the R&R, the record, and the applicable law reveals that Judge Henry properly concluded that Defendants’ Motion to Dismiss should be granted with prejudice. Accordingly, the Court adopts the R&R’s recommendation that the Motion to Dismiss be granted with prejudice.³

Defendants’ Motion to Dismiss, *see* ECF Nos. 47, 50,⁴ is GRANTED and the Complaint, ECF No. 1, is DISMISSED with prejudice.⁵

³ As set forth by Judge Henry, notwithstanding Plaintiff’s *pro se* status, denial of leave to amend the Complaint is appropriate here. *See* R&R at 11.

⁴ Defendants’ Notice of Motion is filed at ECF No. 47; Defendants’ Memorandum of Law in support of their Motion to Dismiss is filed at ECF No. 50.

⁵ Judge Henry also noted that subsequent to argument on Defendants’ Motion to Dismiss, Plaintiff moved to amend his opposition to the Motion to Dismiss, *see* R&R at 4-5, and Judge

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore denies *in forma pauperis* status for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to enter judgment and to close this case. The Clerk of Court is further directed to mail a copy of this Order to Plaintiff.

SO ORDERED.

/s/ Diane Gujarati
DIANE GUJARATI
United States District Judge

Dated: May 9, 2024
Brooklyn, New York

Henry recommended that Plaintiff's motion should be denied, *see* R&R at 11. Having considered Plaintiff's motion, ECF No. 73, and in light of the above, the motion is denied.